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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

J.H. and D.H., as next friends to J.H.J.,)
a minor,)

Plaintiffs,)

v.)

MATANUSKA-SUSITNA BOROUGH)
SCHOOL DISTRICT,)

Defendant.)

) Case No. 3AN-19-_____ CI

COMPLAINT FOR DAMAGES

Comes now Plaintiffs J.H. and D.H., as next friends to J.H.J., a minor, by and through their attorneys Angstman Law Office and the Law Office of Gregory S. Parvin, and for their complaint state and allege as follows:

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THE PARTIES

1. Plaintiffs J.H. and D.H. are the biological parents of their minor son, J.H.J. At the time this Complaint is filed, J.H.J. is 12-years-old. The family resided within the third judicial district, where J.H.J. at the age of eight attended Iditarod Elementary School ["Iditarod Elementary"] in Wasilla, Alaska. J.H.J.'s parents appear as parties only in their representative capacity as next friends to J.H.J., the damages they seek are on behalf of their son, not themselves individually.
2. Defendant Matanuska-Susitna Borough School District ["MSBSD"] is a public school system district covering the Matanuska-Susitna Borough and its main office is in Palmer, Alaska within the third judicial district. Upon information and belief, MSBSD operates on a district wide basis under the management and control of its school board. Iditarod Elementary is a school within the MSBSD system.
3. This court has jurisdiction over this matter pursuant to AS 22.10.020.
4. Venue is proper as Plaintiff J.H.J.'s claims arose in Wasilla, within the third judicial district.

GENERAL ALLEGATIONS

5. MSBSD employed Lukis Nighswonger as a schoolteacher at Iditarod Elementary starting in 2005 through 2018, when he was placed on immediate administrative leave. Nighswonger was put on administrative leave in 2018 following his being questioned at MSBSD about his physical touching of an elementary-age child who was a student in his care. When questioned by MSBSD, Nighswonger admitted he

1 had touched the child. Nighswonger was then transported to law enforcement
2 custody.

3 6. A short time later, Nighswonger admitted to Alaska State Troopers that he was a
4 "pedophile" which he described "as a person who gets gratification from touching
5 children."

6 7. Nighswonger also admitted to Alaska State Troopers that he had been attracted to
7 kids for as long as he could remember.

8 8. After being arrested, charged with felony sexual abuse of a minor while occupying
9 a position of authority over his victim, and arraigned, Nighswonger stated he
10 hoped there would be consideration given to how he had cooperated with
11 investigators.

12 9. The facts show that when Nighswonger was directly confronted with an accusation
13 of child abuse by his employer, he confirmed in a significant way the accusation
14 made against him, leading to his immediately no longer having contact with school
15 children.

16 10. The physical contact Nighswonger had with school children in his care, included
17 but was not limited to, touching their genitals through their clothes, sticking his
18 hand down their pants to touch them sexually, or stroking the children on their legs
19 towards their genitals. Such acts caused the child victims to suffer foreseeable
20 emotional distress and trauma. These actions meet Alaska's definition of "child
21 abuse or neglect" under AS 47.17.290(3) and AS 47.17.020(a)(2).
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- 1 11. An elementary school teacher stroking a student's legs in such a way as to cause
2 the child to feel the touching is "weird" and distressing is not part of the normal
3 caretaking responsibilities of the teacher, not part of the normal interaction a
4 teacher has with elementary school students, and is not a normal sign of affection
5 for the student by the teacher.
6
- 7 12. Any reasonable teacher or reasonable school administrator would be concerned if
8 an elementary school student reported that his or her teacher was touching or
9 stroking their leg and making the child feel "weird" or distressed because of that
10 touching.
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- 12 13. AS 47.17.022(a) imposed a mandatory duty on MSBSD to train school teachers
13 and school administrative staff, "on the recognition and reporting of child abuse
14 and neglect."
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- 16 14. AS 47.17.022(b) imposed a mandatory duty on MSBSD to develop a training
17 curriculum that acquaints its teachers and school administrative staff with, among
18 other things, "the laws relating to child abuse and neglect," "procedures for
19 required notification of suspected child abuse or neglect," "the role of a person
20 required to report child abuse or neglect," and "the manner in which cases of child
21 abuse and neglect are investigated" by the Department of Health and Social
22 Services "after a report of suspected abuse or neglect."
23
- 24 15. All schoolteachers and school staff who have "reasonable cause to suspect that a
25 child has suffered harm as a result of child abuse or neglect shall immediately
26 report the harm to the nearest office of the [D]epartment [of Health and Social
27

Services].” This mandatory duty to report is imposed by AS 47.17.020(a)(2). The duty to report “immediately,” means “as soon as reasonably possible, and no later than 24 hours.”

16. According to AS 47.17.010, in imposing the mandatory duty to report under AS 47.17, “[I]t is not the intent of the legislature that persons required to report suspected child abuse or neglect under this chapter investigate the suspected child abuse or neglect before they are required to report to the department. Reports must be made when there is a reasonable cause to suspect child abuse or neglect in order to make state investigative and social services available in a wider range of cases at an earlier point in time, to make sure that investigations regarding child abuse and neglect are conducted by trained investigators . . .”.

17. When J.H.J. was an 8-year-old fourth grader at Iditarod Elementary during the 2015-2016 school year, he was a student in Lukis Nighswonger’s class. Nighswonger was also J.H.J.’s basketball and track coach at Iditarod Elementary.

18. During the 2015-2016 school year, J.H.J.’s made disturbing reports to his mother, D.H., about Nighswonger, including J.H.J.’s disclosure that Nighswonger was touching his legs and causing J.H.J. to feel “weird.” D.H. perceived that J.H.J. was uncomfortable talking about what was going on between him and Nighswonger and uncomfortable around Nighswonger.

19. Concerned that Nighswonger was inappropriately touching and distressing her 8-year-old son, and not knowing what was best or how to proceed, D.H. sought the advice from one of the other elementary school teachers at Iditarod Elementary.

1 D.H. expected that the elementary school teacher she consulted with would know
2 what to do about J.H.J.'s disturbing reports about Nighswonger's touching and
3 advise her how to proceed.

4
5 20. Upon hearing through D.H. J.H.J.'s reports of Nighswonger touching his legs and
6 causing J.H.J. to feel "weird" and distressed, the teacher referenced in paragraph
7 19 that D.H. consulted with was dismissive, telling D.H. there was no way
8 Nighswonger would behave inappropriately towards children, including her son,
9 D.H.'s concerns were unfounded, and the teacher vouched for Nighswonger as a
10 popular and much-loved teacher.

11
12 21. The teacher D.H. sought advice from discouraged D.H. from doing anything about
13 J.H.J.'s report of Nighswonger touching him and this teacher also did not disclose
14 a teacher's mandatory duty to report suspected child abuse to the Department of
15 Health and Social Services, or what procedures existed to investigate reports of
16 harm that existed at any level concerning a teacher and a student.

17
18 22. When given an opportunity to help J.H.J. and his mother, the teacher D.H.
19 consulted with chose to act as a "gatekeeper" protecting Nighswonger based
20 merely on the teacher's general perceptions and Nighswonger's supposed
21 "reputation," rather than responding to the child's complaint as to Nighswonger's
22 touching and the emotional distress this caused.

23
24 23. In not reporting J.H.J.'s complaint about Nighswonger to the Department of Health
25 and Social Services, and in discouraging D.H. from doing anything to pursue her
26 child's complaint, the teacher D.H. turned to for advice and information violated

1 signs posted for children at the school: "Children Are . . . BELIEVABLE, trust
2 them" and "Children Are . . . VULNERABLE, protect them."

3
4 24. After vouching for Nighswonger and telling D.H. that her concerns about
5 Nighswonger and J.H.J. were unfounded, the teacher D.H. sought out for
6 information and help failed to report D.H.'s concerns about Nighswonger and J.H.J.
7 to the school's principal, to MSBSD, to the MSBSD school board, to law
8 enforcement, or to the Department of Health and Social Services.

9
10 25. Discouraged from thinking Nighswonger would behave inappropriately with
11 children D.H. nevertheless continued to notice how J.H.J. continued to describe
12 Nighswonger as "weird," and "acted out" in regards to Nighswonger. One thing
13 D.H. noticed but did not immediately make sense of, was that J.H.J. would get
14 very upset if he was unable to find his belt as he was getting ready for school.
15 J.H.J. seemed only comfortable going to school if his pants were secured by a belt
16 around his waist. Over months J.H.J.'s "acting out" escalated whenever contact
17 with Nighswonger was imminent.
18

19 26. Despite the fellow-teacher's earlier assurances that Nighswonger posed no risk to
20 her son, D.H. continued to be disturbed and alarmed by J.H.J.'s complaint of
21 Nighswonger touching him and the escalating "acting out" she perceived when
22 J.H.J. was expected to have contact with Nighswonger. D.H. called Iditarod
23 Elementary and a meeting was scheduled with a school administrator in which D.H.
24 reported J.H.J.'s complaint about Nighswonger and asked that J.H.J. be placed in a
25 different class with a different teacher. The school administrator was dismissive of
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1 J.H.J.'s complaint and denied D.H.'s request to move her son to a different
2 teacher's classroom. The school administrator presumed to tell D.H. there was no
3 reason to move her son to a different class because her son's complaint had no
4 basis in fact. The school administrator made this statement based on no
5 investigation and during the same conversation in which D.H. was present to
6 report her concerns.
7

8 27. Like the fellow-teacher, the school administrator vouched for Nighswonger as
9 someone who would not pose a risk to children, including D.H.'s son.
10

11 28. In actual fact, Nighswonger was touching J.H.J., including Nighswonger putting
12 his hand down J.H.J.'s pants to touch him sexually.

13 29. Nighswonger's child sexual abuse of J.H.J. occurred at Iditarod Elementary
14 when Nighswonger was in the role of J.H.J.'s teacher and in a position of authority over the 8-
15 year-old child.
16

17 30. After vouching for Nighswonger and telling D.H. who had come to him for help
18 that concerns about Nighswonger and J.H.J. were unfounded, the school administrator failed to
19 report what the person had learned from D.H. about Nighswonger and J.H.J. to school security,
20 to MSBSD, to the MSBSD school board, to the Department of Health and Social Services, the
21 Commissioner for the Department of Education and Early Development, or to law enforcement.
22

23 31. It is unknown if the school administrator made an attempt to question
24 Nighswonger concerning J.H.J.'s complaint or D.H.'s request that J.H.J. be removed from his
25 classroom after D.H. met with the individual.
26

1 32. It is unknown if the school administrator documented J.H.J.'s complaint made
2 through his mother in any manner MSBSD or any other administrator could consider if there
3 were further accusations made against Nighswonger at a later time by J.H.J. or another
4 elementary school child or any child's parents.
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6 33. Instead of reporting J.H.J.'s complaint concerning Nighswonger to the
7 Department of Health and Social Services or taking some other protective action, the school
8 administrator acted as a gatekeeper preventing any meaningful investigation of J.H.J.'s
9 complaint by those best trained to investigate as the Legislature intended when it enacted AS
10 47.17.
11

12 34. In acting without proper investigation as to the complaints made by J.H.J. against
13 Nighswonger, in presuming to be the "gatekeeper" to J.H.J.'s complaints and causing the
14 complaints not to be immediately investigated, and in assuring D.H. that Nighswonger could not
15 be posing a risk, the fellow teacher and school administrator, as agents for the Defendant, acted
16 corruptly, maliciously, or in bad faith, placing the interests of a colleague above the safety of a
17 little child who, through his mother, was reporting a reasonable suspicion of "grooming" or
18 actual sexual abuse.
19

20 **CAUSE OF ACTION**

21 **(Vicarious Liability)**
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24 35. Plaintiffs incorporate by reference paragraphs 1-34 of the Complaint.
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1 36. In meeting with D.H. at school about her son's complaints about Nighswonger's
2 offensive touching, the fellow teacher and school administrator reference under the general
3 allegations were acting within the scope of their employment with MSBSD.

4
5 37. In refusing D.H.'s request that her son be removed from Nighswonger's
6 classroom, the school administrator was acting within the scope of that person's employment
7 with MSBSD.

8 38. In reacting to J.H.J.'s complaints about Nighswonger presented through his
9 mother, the fellow teacher and school administrator referenced herein were engaged in conduct
10 "reasonably incidental" to their employment with MSBSD.

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12 39. The fellow-teacher and school administrator's acts or omissions were either
13 motivated to serve their employer or fell within the "time and space" requirements for an
14 employer to be responsible for the torts of its employee(s).

15 40. In enacting AS 47.17.020, the Legislature established a mandatory duty for any
16 school teacher or school administrator to immediately report to the Department of Health and
17 Social Services if the teacher or staff member has reasonable cause to suspect a child has
18 suffered harm as a result of child abuse or neglect.

19
20 41. An elementary school child such as J.H.J. was within the foreseeable class of
21 persons AS 47.17.020 was designed to protect.

22
23 42. This mandatory duty to report, as established by AS 47.17.020 and further
24 explained by the Legislature's purpose articulated in AS 47.17.010, applied to Defendant's
25 employees during all relevant times as described herein.

1 43. Defendant's employees each breached their duty to immediately report to the
2 Department of Health and Social Services D.H.'s concerns that school teacher Nighswonger
3 was touching J.H.J.'s legs causing him to feel "weird" and distressed as this was not normal
4 student/teacher contact and give each of the school's employees referenced herein reasonable
5 cause to suspect J.H.J. was suffering harm as a result of child abuse occurring at the school.
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7 44. As a result of the breach of their duties to immediately report to the Department
8 of Health and Social Services, each of the school's employees failed to safeguard a vulnerable
9 child, they shielded Nighswonger from investigation by the Department and enabled
10 Nighswonger to further distress J.H.J. and have the opportunity to continue to abuse him and
11 possibly other elementary school children.
12

13 45. J.H.J. was damaged by Defendant's employees' breach of their statutory duty to
14 immediately report to the Department of Health and Social Services.
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16 46. Defendant's employees' breach of their mandatory duty to report constitutes
17 negligence per se and/or evidence of negligence.
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19 47. Defendant's employees also breached a duty to reasonable care they owed to
20 J.H.J., a foreseeable victim of child abuse and neglect.
21

22 47. Defendant MSBSD is vicariously liable for the acts or omissions of the fellow-
23 teacher and school administrator done within the scope of their employment.
24

25 48 Under the circumstances, MSBSD is vicariously liable for the damages arising
26 from their employees' statutory breach of duty and their breach of the duty of reasonable care
27 owed to J.H.J.
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PRAYER FOR RELIEF

COMPLAINT FOR DAMAGES

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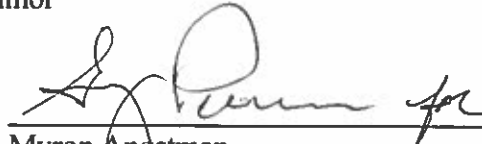
1 WHEREFORE, Plaintiffs request the following relief:

- 2 1. For judgment against the Defendant in excess of the jurisdictional limit for
3 superior court cases, the precise amount to be decided by a jury;
4
5 2. For post-judgment interest, attorneys' fees, and costs incurred in this matter; and
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7 3. For such other relief as this court deems just and equitable.

8 DATED this 19th day of February 2019, at Bethel, Alaska.

9 ANGSTMAN LAW OFFICE

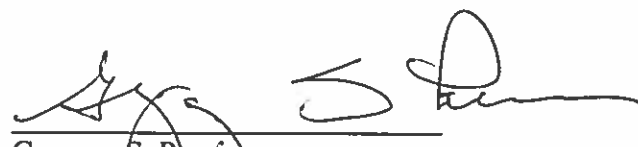
10 Attorneys for Plaintiffs J.H. and D.H. as next friend to J.H.J., a
11 minor

12 
13 Myron Angstman
14 AK Bar No.: 7410057

15 DATED this 19th day of February 2019, at Palmer, Alaska.

16 LAW OFFICE OF GREGORY S. PARVIN

17 Attorney for Plaintiffs J.H. and D.H. as next friend to J.H.J.,
18 a minor

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